



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Corbin Superior Composites, Inc.

File: B-242394.3

Date: August 7, 1991

Ted D. Corbin for the protester,
Jonathan H. Kosarin, Esq., Department of the Navy, for the
agency,
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,
Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that agency should have rejected protester's bid as nonresponsive because protester offered a shorter bid acceptance period than the 120 days required by the invitation for bids is denied where the protester committed itself to meet the 120-day requirement by signing its bid.
2. The General Accounting Office will not review an agency determination that urgent and compelling circumstances necessitate award of a contract prior to the issuance of a decision on the protest.

DECISION

Corbin Superior Composites, Inc. protests the Navy Ships Parts Control Center's award of a contract for inflating cylinders to be used on U.S. Navy life rafts to Brunswick Corp. under invitation for bids (IFB) No. N00104-91-B-0001. Corbin contends that Brunswick's bid was nonresponsive because Brunswick offered a bid acceptance period that was shorter than the one required by the IFB.

We deny the protest.

Item 12 of the IFB's Standard Form (SF) 33, entitled "Solicitation, Offer and Award," contained the standard 60-day bid acceptance period requirement; however, a note immediately above the item indicated that it would not apply if the solicitation included the provisions at Federal Acquisition Regulation (FAR) § 52.214-16, Minimum Bid Acceptance Period.

The solicitation did include FAR § 52.214-16, which stated that the government required a minimum bid acceptance period of 120 calendar days. The section also included a space in which bidders could specify a longer acceptance period than the government's minimum requirement.

Prior to the date specified for receipt of bids, December 21, 1990, Corbin filed a protest with our Office objecting to one of the solicitation's technical requirements. Despite the protest, the agency proceeded with bid opening as scheduled. Of the five bids received, Brunswick's price of \$1,243,788 was low and Corbin's price of \$1,288,812 (if first article test was required) or \$1,271,928 (if first article test was waived) was second low. None of the bidders specified a longer bid acceptance period than the government's minimum requirement.

On February 15, 1991, the agency buyer, who erroneously believed that the bidders' bid acceptance periods would expire on February 19 (60 days after the December 21, 1990, bid opening date), telefaxed a letter to all five bidders requesting that they extend the time for acceptance of their bids until March 7, 1991. All bidders except Corbin responded by agreeing to extend their bid acceptance periods until March 7. Corbin responded by noting that its bid was valid for 120 days from the date of bid opening (i.e., until April 20, 1991) and that an extension of its bid acceptance period was thus not required to hold the bid open until March 7.

On March 7, the agency determined, and on March 8, reported to our Office, that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for our decision on Corbin's protest of the IFB's technical requirements. On March 8, a preliminary notice of award was telefaxed to Brunswick.

Corbin contends that by agreeing to extend its acceptance period until March 7, Brunswick disclosed that it had originally intended to offer an acceptance period of only 60 days. The protester argues that Brunswick's bid should thus be rejected as nonresponsive for failing to offer the minimum bid acceptance period of 120 days specified in the solicitation.

To be responsive, a bid must comply with all the material terms of an IFB, one of which is the minimum bid acceptance period. Isometrics, Inc., B-241333, Oct. 30, 1990, 90-2 CPD ¶ 352. Here, Brunswick's bid committed the firm to the 120-day acceptance period specified in the IFB, and therefore was responsive.

The SF 33 explicitly stated that item 12, which contained the standard 60-day bid acceptance period requirement, would not apply if the solicitation included the provisions at FAR § 52.214-16, which it did. Section 52.214-16 required a minimum bid acceptance period of 120 days, and by signing its bid (without specifying a longer period of acceptance), Brunswick committed itself to meet the 120-day requirement. See Robert E. Derecktor of Rhode Island, Inc.; Marine Power & Equip. Co., Inc., 60 Comp. Gen. 61 (1980), 80-2 CPD ¶ 361. Brunswick's subsequent response to the agency buyer's request for an "extension" of the acceptance period had no effect on this commitment. Thus, there was no basis to reject Brunswick's bid as nonresponsive for failing to offer a bid acceptance period of at least 120 days.^{1/}

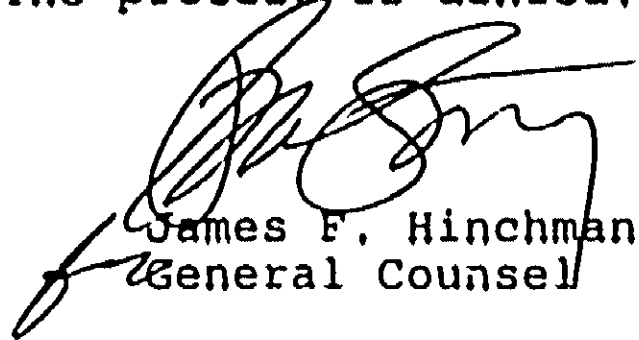
Corbin also complains that although the head of the procuring activity responsible for award of the contract determined that urgent and compelling circumstances significantly affecting interests of the United States would not permit waiting for our decision on its protest of the IFB's technical requirements, the Navy did not modify Brunswick's production schedule to accelerate delivery of the "urgently" required cylinders. To the extent that the protester intends to protest the agency determination that urgent and compelling

^{1/} In commenting on the agency report, Corbin further argues that it is unclear whether FAR § 52.214-16 was included in the IFB and thus whether item 12 on the SF 33 would apply. The protester notes that in response to its request for copies of all FAR clauses incorporated into the solicitation by reference, the contracting officer furnished it with a copy of the page setting forth the text of FAR § 52.214-16 and this text had been crossed out. According to Corbin, this could be interpreted as indicating that FAR § 52.214-16 was not included in the IFB.

We disagree. The reason that the Navy furnished Corbin with a copy of the text of FAR § 52.214-16, which was crossed out, is that Corbin requested copies of the FAR clauses incorporated by reference, and FAR § 52.214-16 was not incorporated by reference; rather, its full text was set forth in the solicitation. Thus, the fact that the Navy crossed out the text of FAR § 52.214-16 in responding to Corbin's request for copies of the FAR sections incorporated into the solicitation by reference did not create any ambiguity as to whether or not that section was included in the IFB.

circumstances necessitated award of a contract prior to issuance of our decision, the matter is not for our review. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In any event, given our finding that Corbin's protest is without merit, Corbin was not prejudiced by the agency's decision to proceed with award.

The protest is denied.



James F. Hinchman
General Counsel